



## **I. PROCEDURAL HISTORY**

The Court adopts the procedural history as stated in the parties' briefs.

Plaintiff filed the present action on February 19, 2020. He assigns error to the Administrative Law Judge's failure to consider Listing 1.03 (reconstructive surgery or surgical arthrodesis of a major weight-bearing joint). "Plaintiff's Memorandum ... "at 5-8 (document #7-1).

## **II. STANDARD OF REVIEW**

The Social Security Act, 42 U.S.C. § 405(g) and § 1383(c)(3), limits this Court's review of a final decision of the Commissioner to: (1) whether substantial evidence supports the Commissioner's decision, Richardson v. Perales, 402 U.S. 389, 390, 401 (1971); and (2) whether the Commissioner applied the correct legal standards. Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990); see also Hunter v. Sullivan, 993 F.2d 31, 34 (4th Cir. 1992) (*per curiam*). The District Court does not review a final decision of the Commissioner *de novo*. Smith v. Schweiker, 795 F.2d 343, 345 (4th Cir. 1986); King v. Califano, 599 F.2d 597, 599 (4th Cir. 1979); Blalock v. Richardson, 483 F.2d 773, 775 (4th Cir. 1972).

As the Social Security Act provides, "[t]he findings of the [Commissioner] as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). In Smith v. Heckler, 782 F.2d 1176, 1179 (4th Cir. 1986), quoting Richardson v. Perales, 402 U.S. 389, 401 (1971), the Fourth Circuit defined "substantial evidence" thus:

Substantial evidence has been defined as being "more than a scintilla and do[ing] more than creat[ing] a suspicion of the existence of a fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

See also Seacrist v. Weinberger, 538 F.2d 1054, 1056-57 (4th Cir. 1976) (“We note that it is the responsibility of the [Commissioner] and not the courts to reconcile inconsistencies in the medical evidence”).

The Fourth Circuit has long emphasized that it is not for a reviewing court to weigh the evidence again, nor to substitute its judgment for that of the Commissioner, assuming the Commissioner’s final decision is supported by substantial evidence. Hays v. Sullivan, 907 F.2d at 1456 (4th Cir. 1990); see also Smith v. Schweiker, 795 F.2d at 345; and Blalock v. Richardson, 483 F.2d at 775. Indeed, this is true even if the reviewing court disagrees with the outcome – so long as there is “substantial evidence” in the record to support the final decision below. Lester v. Schweiker, 683 F.2d 838, 841 (4th Cir. 1982).

### **III. DISCUSSION OF CLAIM**

The question before the ALJ was whether Plaintiff became disabled at any time.<sup>1</sup> Plaintiff argues that the ALJ erred by failing to consider Listing 1.03 relating to reconstructive surgery or surgical arthrodesis of a major weight-bearing joint. (Tr 14-15). Where a listed impairment is implicated in the medical records,

[t]he ALJ . . . identif[ies] the relevant listed impairments. He should then . . . compar[e] each of the listed criteria to the evidence of [Plaintiff’s] symptoms. Without such an explanation, it is simply impossible to tell whether there was substantial evidence to support the determination.

---

<sup>1</sup>Under the Social Security Act, 42 U.S.C. § 301, et seq., the term “disability” is defined as an:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months...  
Pass v. Chater, 65 F. 3d 1200, 1203 (4th Cir. 1995).

Cook v. Heckler, 783 F.2d 1168, 1173 (4th Cir. 1986). The Fourth Circuit has held that such analysis is “[a] necessary predicate to engaging in substantial evidence review.” Radford v. Colvin, 734 F.3d 288, 295-96 (4th Cir. 2013)

The ALJ did not evaluate Plaintiff’s foot and ankle injuries or resulting surgeries under Listing 1.03, which was clearly implicated by the medical records. Remand is necessary for the ALJ to apply the Listing criteria to the evidence and determine whether that Listing has been met. See Radford, 734 F.3d at 296 (where ALJ’s analysis is incomplete, remand for further development of the record is appropriate rather than the district court mining facts to support or refute ALJ’s decision). For this reason, the Court remands this matter for a new hearing.

By ordering remand pursuant to sentence four of 42 U.S.C. § 405(g), the Court does not forecast a decision on the merits of Plaintiff’s application for disability benefits. See Patterson v. Comm’r of Soc. Sec. Admin., 846 F.3d 656, 663 (4th Cir. 2017). “Under § 405(g), ‘each final decision of the Secretary [is] reviewable by a separate piece of litigation,’ and a sentence-four remand order ‘terminate[s] the civil action’ seeking judicial review of the Secretary’s final decision.” Shalala v. Schaefer, 509 U.S. 292, 299, 113 S. Ct. 2625, 2630-31, 125 L.Ed. 2d 239 (1993) (quoting Sullivan v. Hudson, 490 U.S. 877, 892, 109 S.Ct. 2248, 2258, 104 L.Ed.2d 941 (1989)).

#### **IV. ORDER**

##### **NOW THEREFORE IT IS ORDERED:**

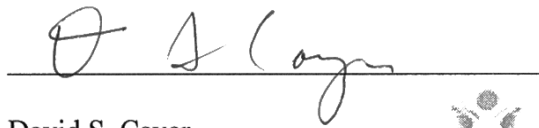
1. Plaintiff’s “Motion for Summary Judgment” (document #7) is **GRANTED**; Defendant’s “Motion for Summary Judgment” (document #8) is **DENIED**; and the

Commissioner's decision is **REVERSED**. This matter is **REMANDED** for a new hearing pursuant to Sentence Four of 42 U.S.C. § 405(g).<sup>2</sup>

2. The Clerk is directed to send copies of this Memorandum Order to counsel for the parties.

**SO ORDERED.**

Signed: September 15, 2020

A handwritten signature in black ink, appearing to read "D S Cayer", is written over a horizontal line.

David S. Cayer  
United States Magistrate Judge



---

<sup>2</sup>Sentence Four authorizes "a judgment affirming, modifying, or reversing the decision ... with or without remanding the cause for a rehearing." Sullivan v. Finkelstein, 496 U.S. 617, 625 (1990).